

HIGH COURT OF UTTARANCHAL AT NAINITAL.

(Chapter VIII Rule 32 (2) (b)
Description of the Case.

Criminal appeal No. 1041 of 2001

Date of Decision : 20th April, 2006

A.F.R. (Approved for reporting)

~~Not approved for reporting.~~

Date

Initial of Judge.

Note : Bench reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

**IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL**

CRIMINAL APPEAL NO. 1041 OF 2001

(Criminal appeal no.1851 of 1982 Old Number)

1. Radha Krishna,
S/o Durga Dutta Pathak
2. Dinesh Chandra,
S/o Sri Radha Krishna
3. Satish Chandra,
S/o Sri Radha Krishna,
(Died during the pendency of
appeal and the appeal has been abated against
him vide order dated 11-03-2005)
All residents of Village Deoriya,
P.S. Kichcha,
District Nainital Appellants

Versus

State of Uttaranchal Respondent

Mr. Sandeep Tandon, learned counsel for the appellants
Sri A. Rab, Addl. G.A. and Mr. Rajeev Mohan, learned AGA for the State.

Hon'ble J.C.S. Rawat, J.

1. This is a Criminal Appeal against the Judgment and order dated 27-07-1982 passed by Ist Addl. Sessions Judge, Nainital in Sessions Trial No. 08 of 1980 State Vs. Radha Krishna and others, whereby the learned Addl. Sessions Judge has convicted and sentenced the appellants U/s 304 Part II I.P.C. read with Section 149 I.P.C. to undergo R.I. for 10 years, U/s 147 I.P.C. to undergo R.I. for one year and U/s 323 read with 149 I.P.C. to undergo R.I. for one year. All the sentences were ordered to run concurrently.

2. The facts, in nutshell, are that there was old enmity and litigation between the complainant Mahesh Chandra Joshi (PW1) and Radha Krishna Pathak (appellant) regarding land. On 24.06.1979 at 06:30 p.m. Harish Chandra Joshi (PW-3), brother of Mahesh Chandra Joshi was coming back after giving milk to the milk vendor. On the way Dinesh Chandra, Satish Chandra S/o Radha Krishna Pathak and Radha Krishna appellant and Hori Lal and Munna Lal servants of Radha Krishna encircled Harish Chandra Joshi and started beating him. Sumant Kumar, brother of Mohan Chandra Joshi reached to escape Harish Chandra Joshi. The appellants and others also beat Sumant Kumar. Thereafter Mohan Chandra Joshi (PW-1) and his brother Suresh Chandra Joshi rushed to save their brothers. Seeing them the appellants and others ran away. The two brothers of the complainant received injuries.

3. Mahesh Chandra Joshi (PW-) submitted written report Ex. Ka 1 at P.S. Kichchha at 08:15 p.m. on 24-06-1979 on the basis of which F.I.R. Ex. Ka 5 was prepared by Head Moharrir Som Dev Sharma (PW-8) and a case was registered vide G.D. entry Ex. Ka 6. The investigation was entrusted to S.I. J.C. Tyagi, (PW-9).

4. Sumant Kumar was medically examined on 24.06.1979 at 8.30 p.m. by Dr. Brij Kishor, PW-2 at P.H.C. Kichchha. The following injuries were found on his person vide injury report (Ex. Ka2):-

1. Multiple lacerated wound in the area of 8cm X 1/2cm muscle deep in the middle of scalp.
2. Contusion 3cm X 4cm on the right side of the forehead 3cm above the right eye brow.
3. Contusion 8 cm X 2cm on the right shoulder joint.
4. Contusion 8cm X 3cm on the left side of the back 6cm below the inferior angle of left scapula.

The injuries were simple and were caused by some blunt object. The duration was fresh.

5. Harish Chandra Joshi was medically examined by the same doctor at 8:40 p.m. As per his injury report (Ex.Ka.3), the following injuries were found on his person.

1. Lacerated wound 3cm X ½ cm X muscle deep on the middle of the scalp.
2. Lacerated wound 7cm X 1/2cm X muscle deep on the front side of the scalp.
3. Abrasion 1cm x 1cm on the extensor surface of the left elbow joint.
4. Contusion 2cm X 1cm on the upper border of the right scapula.
5. Contusion 2cm X 1cm on the left side of back 6cm below the inferior angle of the left scapula.

All the injuries were simple and were caused by some blunt object. The duration was fresh.

6. Sumant Kumar succumbed to his injuries on 25-06-1979 at 03:45 p.m. in P.H.C. Kichchha. The Investigating Officer J.C. Tyagi (PW-9) visited P.H.C. Kichchha and prepared panchayatnama Ex.Ka-8 along with other necessary papers Ex.Ka.9 to Ka.11. The dead body was sealed and sent to Civil Hospital, Haldwani for post mortem. Dr. S.K. Makhijani (PW-6) conducted the post mortem on the dead body of Sumant Kumar on 26-06-1979 at 10:15 a.m. The following ante mortem injuries were found on the body of the deceased:-

1. One stitched wound 9cm long on the right side of head 10 cm above and slightly behind the right ear.
2. One abraded contusion 3cm X 4cm on the right side of fore head 3cm above the right eye brow (from its middle part).
3. One abraded contusion 2cm X $\frac{1}{2}$ cm on right side of forehead $3\frac{1}{2}$ above the inner part of the right eyebrow.
4. One abrasion 1cm X $\frac{1}{6}$ cm on the left side of back of chest on the region of supra scapular position.
5. One abraded contusion 8cm X 3cm on the right side of back in the supra scapular region.
6. One contusion 3cm X 2cm on the back of the left wrist on the ulna side.
7. One contusion 8cm X 3cm on the left side of back 2cm below the inferior angle of left scapula bone.

8. One traumatic swelling 12cm X 6cm on the right side of head in the right temporal region just in front, above and behind the right ear.
9. Clotted blood seen in the region of injury no. (1) and (8) on the opening of scalp.
10. Fracture of the right temporal bone seen at many places.
11. Clotted blood seen on the right side of the skull cavity on opening.

The doctor opined that the death occurred due to coma as a result of head injury.

7. The Investigating Officer visited the place of occurrence and prepared site plan Ex.Ka.7. He also prepared recovery memo (Ex.Ka.12) regarding blood stained shirt. After completing the investigation the Investigating Officer submitted charge sheet Ex. Ka 13.

8. Charge was framed against the appellants and Hori Lal and Munni Lal under sections 147, 148, 304 Part II/149 I.P.C. to which the appellants denied and claimed trial.

9. The prosecution in support of its case examined PW1 Mahesh Chandra Joshi complainant, PW-2 Dr. Brij Kishor who proved injury reports Ex.Ka2 and Ex.Ka.3 of Sumant Kumar and Harish Chandra Joshi respectively, PW-3 Harish Chandra Joshi is the injured, Constable Girish Chandra is the formal

witness and his affidavit has been filed and marked as PW-4, PW-5 Ved Prakash is the witness of fact. PW-6 Dr. S.K. Mikhijani proved post mortem report Ex.Ka4 of Sumant Kumar. The prosecution has filed the affidavit of Constable Santosh Kumar Singh who brought the dead body to the mortuary in sealed bundle and this affidavit has been marked as PW-7. He is a formal witness. PW-8 Som Dev Sharma Head Moharrir proved F.I.R. Ex.Ka.5 and G.D. entry Ex.Ka.6. PW-9 S.I. J.C. Tyagi, Investigating Officer proved Ex.Ka.7 to Ex.Ka.13.

10. The statement of the accused –appellants were recorded u/s 313 Cr.P.C. and they denied the allegations levelled against them and stated that Hori Lal and Muni Lal were their servants and they had stated that they had been falsely implicated in the said case. It was further stated in their statement that the witnesses had given the false evidence against them.

11. The learned trial court after appraisal of the evidence on record convicted and sentenced the appellants as mentioned above. However the learned trial court acquitted Hori Lal and Munni Lal.

12. I have heard the learned counsel for the appellants, learned A.G.A. and perused the record.

13. At the outset, it needs to be mentioned that it is not disputed that death of Sumant Kumar, deceased was a homicidal death It has also not

been disputed that Harish Chandra Joshi PW3 had sustained the injuries on 24.06.1979. Dr. Brij Kumar PW2 who examined the injuries of Sumant Kumar, deceased and Harish Chandra Joshi PW3 had opined that the injuries were caused by blunt object and these injuries could have been sustained on 24.06.1979 at about 6:30 PM. Dr. Brij Kumar PW2 admitted Sumant Kumar in the P.S.C., Kichchha on the date of the incident and Sumant Kumar succumbed his injuries on the next day, i.e., 25.06.1979 at about 3:45 AM. Dr. S.K. Mikhijani PW6 conducted the autopsy on the body of the deceased on 26.06.1979 at about 10:15 AM at Haldwani. The Doctor had opined that the death of the deceased was due to coma which was resulted of the head injuries. The prosecution has also adduced the evidence of Harish Chandra Joshi, injured as Harish Chandra Joshi-PW3 and Mahesh Chandra Joshi, informant PW1 as an eyewitness who had stated that the incident took place on 24.06.1979 at about 7:30 PM. Harish Chandra Joshi PW3 and Sumant Kumar sustained the injuries on their persons.

14. Now, I have to consider whether the appellants were responsible for the injuries sustained by Harish Chandra Joshi PW3 and Sumant Kumar, deceased. The prosecution adduced the evidence of Mahesh Chandra Joshi, informant PW1, Harish Chandra Joshi injured PW3 and Ved Prakash PW5 as eyewitnesses of the incident. Harish Chandra Joshi, injured PW3 had stated in his deposition that he was returning

after giving the milk to Rafiq milkman from the Batia (a small path). The appellants alongwith other two persons Hori Lal and Munni Lal are said to be the servants of Radha Krishna, appellant met him and they were heaving lathies on their hand and they started blowing lathies on Harish Chandra Joshi. When his brother Sumant Kumar saw them beating his brother, Harish Chandra Joshi PW3, he came to save him at the place of incident. When Sumant Kumar reached at the spot, the appellant alongwith other two persons started blowing lathies on him also. Meanwhile, their brothers Mahesh Chandra Joshi PW1 and Suresh Chandra saw the incident and they started approaching the place of incident. Seeing them approaching, the appellants ran away from the place of incident. Mahesh Chandra Joshi PW1, brother of the injured also corroborated the above fact in his evidence. Harish Chandra Joshi PW3 and Sumant Kumar sustained injuries on their persons during the incident. Immediately thereafter Mahesh Chandra Joshi PW1 scribed the report at his residence. Thereafter he took his both brothers Sumant Kumar, deceased and Harish Chandra Joshi PW3 to the Police Station where he lodged the report and thereafter the injured were taken to the hospital. The medical examination was conducted by Dr. Brij Kishore PW2 at the same day at about 8:30 PM. Both the injured were admitted to P.S.C., Kichchha. Sumant Kumar, injured died due to injuries sustained by him in the P.S.C., Kichchha on the next day, i.e., on 25.06.1979 at about 3:45 PM. Ved Prakash PW5 is an eyewitness of the fact. He

had tried to corroborate the version of the eyewitnesses.

15. After the appraisal of the evidence, the learned Addl. Sessions Judge convicted the appellants and acquitted the accused Hori Lal and Munni Lal. The learned Addl. Sessions Judge had held that the participation of the accused Hori Lal and Munni Lal was doubtful and the chances are there that actually some persons were there to form unlawful assembly with the appellant. The learned Addl. Sessions Judge further held that if at the end of and on the whole of the case, there is a reasonable doubt created by the evidence given by either the prosecution or the defence as to the culpability of a particular accused, then that accused is entitled to get the benefit of doubt and acquittal. He further held that the participation of the other two accused, Hori Lal and Munni Lal is doubtful and possibility cannot be ruled out that some two other persons were there to form unlawful assembly with the appellants. He had further held that there was no mistake on the part of the eyewitnesses to recognize the assailants as they were close relatives and the prosecution witness committed a mistake to recognize the other two persons. In view of the above findings, learned Addl. Sessions Judge acquitted Munni Lal and Hori Lal.

16. The learned Addl. Sessions Judge while appreciating the evidence of Ved Prakash PW5 held that the evidence of Ved Prakash was not reliable.

Firstly on the ground that he had stated at the time of the incident that he was at his field so as to make understand his servants the work that they had to do there. It is also clear from his deposition that he had no house in the same vicinity and he had no occasion to present at the spot at the time of the incident. It was further held that there was sufficient material on record to establish that he had sold out his land where he was standing in his field to understand his servants to work. The sale deed Ex.Kha-1 clearly reveals that his father Hans Raj executed the sale deed of the above land on 21.06.1979 prior to the date of the incident and there was a recital in the sale deed that he had handed over the possession to the vendee. This being so there could hardly be any occasion for Ved Prakash coming over on the said plot on the date of incident. The learned Addl. Sessions Judge further held that there was litigation pending between Ved Prakash and his father and the appellants. The learned Addl. Sessions Judge had discussed the entire evidence of Ved Prakash-PW5 in detail and found incredible and unreliable.

17. The learned Sessions Judge relied upon the testimony of informant Mahesh Chandra-PW1 and Harish Chandra-injured, PW3 and he based his conviction on the basis of the evidence of these two witnesses. The learned counsel for the defence contended that the evidence of the prosecution cannot be relied upon because the place of occurrence has not been established by the

prosecution. The learned counsel for the defence pointed out that the place of incident has been marked as 'A' in the site plan Ex.Ka-7. According to the Investigating Officer, the place of occurrence falls in the Southern portion of the field of the complainant party. The learned counsel for the defence further contended that Mahesh Chandra Joshi PW1 and Harish Chandra Joshi PW3 had stated in their deposition that the incident took place in a *rastha* exists in between the field of both the parties. Site plan is not a substantive piece of evidence. The site plan prepared by the Investigating Officer is only admissible to the extent what the I.O. personally saw and noted alone would be admissible. The other facts which have been stated by the witnesses at the spot that is not admissible in evidence and these facts are clearly hit by Section 162. It has been held in **State of U.P. Vs. Babu 2004 SCC (Crl) P/144 in para 5 :-**

*"5. A bare perusal of the High Court's judgment goes to show that its approach was rather casual and no effort was made to analyze the evidence. It is to be noted that the High Court did not examine the evidence of PWs 1 and 3 with the required care. Great emphasis was laid by the High Court on the fact that in the site plan the place where the gaslight was found had not been indicated. The site plan is not substantive evidence. The High Court seems to have proceeded on the basis that the omission to indicate the location of the gaslight in the site plan was fatal. This Court in **Shakti Patra Vs. State of W.B.** held that where a prosecution witness testified*

*that he had identified the accused in the light of the torch held by him, the presence of torch would not be said to be not proved on the ground that there was no mention of torch in the FIR or in the statement of the witness before the police, when there was testimony of other witnesses that when they reached the spot they found the torch burning. To similar effect is the conclusion in **Aher Pitha Vajshi V. State of Gujarat**. It would be proper to take note of what was stated in **George Vs. State of Kerala** regarding statements contained in an inquest report. The statements contained in an inquest report, to the extent they relate to what the investigating officer saw and found are admissible but any statement made therein on the basis of what he heard from others, would be hit by Section 162 of the code of Criminal Procedure, 1973. The position is no different in case of a site plan.*

18. The Hon'ble Supreme Court in **State of Rajasthan Vs. Bhawani and another** reported in 2003 Vol.7 SCC P/291 has held that “ *The High court has extensively relied upon the site plan prepared by the investigating officer for discarding the prosecution case and for this purpose has referred to the place from where the accused are alleged to have entered the nohara, the place from where they are alleged to have fired upon the deceased and also has drawn an inference that the place wherefrom the accused are alleged to have fired upon the deceased, the shot could not have hit the houses on the eastern side of the nohara. Many*

*things mentioned in the site plan have been noted by the investigating officer on the basis of the statements given by the witnesses. Obviously, the place from where the accused entered the nohara and the place from where they resorted to firing is based upon the statement of the witnesses. These are clearly hit by Section 162 CrPC. What the investigating officer personally saw and noted along would be admissible. This legal position was explained in **Tori Singh Vs. State of U.P.** in the following words :-*

“A rough sketch map prepared by the Sub-Inspector on the basis of statements made to him by witnesses during the course of investigation and showing the place where the deceased was hit and also the places where the witnesses were at the time of the incident would not be admissible in evidence in view of the provisions of Section 162 of the Code of Criminal Procedure, for it is in effect nothing more than the statement of the Sub-Inspector that the eyewitnesses told him that the deceased was at such and such place at the time when he was hit. The sketch map would be admissible so far as it indicates all that the Sub-Inspector saw himself at the spot; but any mark put on the sketch map based on the statements made by the witnesses to the Sub-Inspector would be inadmissible in view of the clear provisions of Section 162 of the Code of Criminal Procedure as it will be no more than a statement made to the police during

investigation. Therefore, such marks on the map cannot be used to found any argument as to the improbability of the deceased being hit on that part of the body where he was actually injured, if he was standing at the spot marked on the sketch map.”

19. In view of the above discussion, the place ‘A’ has been pointed out by the witnesses. This has been pointed out on the basis of the other evidences. It had not been ascertained by the Investigating Officer himself but it is on the basis of the statement of other persons. In view of the above, the prosecution case cannot be discarded that the Investigating Officer has shown the point ‘A’ as a place of occurrence although the place of occurrence is a little different from the place of incident.

20. The evidence of Mahesh Chandra Joshi PW1 and Harish Chandra Joshi-PW3 clearly reveals that the incident took place on the Southern side of the field of the complainant. The site plan clearly reveals that there is a road on the extreme southern side of the land of the appellant and the complainant party. In between the land of the parties and the road, there existed peepal tree. The Investigating Officer has shown a pathway connecting the road, peepal tree and the land of the parties. Mahesh Chandra Joshi PW1 and Harish Chandra Joshi PW3 had clearly stated that the incident took place in the Southern side of their fields. The place of occurrence

existed in between the fields of both the parties. It was further stated that south of that peepal tree existed thereunder. Harish Chandra had given the milk to Rafiq. The learned counsel for the defence tried to point out the minor discrepancies with regard to the distance in paces from the peepal tree to the place of incident. When the injured Harish Chandra Joshi PW3 was returning after giving milk to the Rafiq by this land existed in between the fields of both the parties, the occurrence took place. PW1 Mahesh Chandra Joshi has also deposed that the accused had forcibly ploughed the rasta and he joined that rasta in his own land. It is also clear from the evidence that the house of the complainant was on the Northern side from the place of incident and it is proved that the incident took place at a particular place. It is not required to be fixed by arithmetical niceties. Different people may identify same place by different ways. If the description is similar that it is sufficient that the place of occurrence had been proved. The learned counsel for the Defence further pointed out that there is a land of the complainant and West to this said field the land of the appellant was there which was numbered on 85/2 and 86/8. The defence has not connected this land with the land as the same where the incident took place. The prosecution nowhere stated that the incident took place in field No. 85/2 and 86/8. These field numbers are different. No incident took place on these fields. The defence by raising this contention trying to confuse the place of incident. It is not the case of either party that the

incident took place in the abovementioned field numbers. The complainant party had other lands in the village which had been shown by the Investigating Officer. I do not find any substance in the contention of the learned counsel for the defence.

21. It was further pointed out that the prosecution has not produced the independent witnesses in support of his defence. It was further pointed out that the prosecution had admitted that there are so many houses near the house of the complainant and the accused. But none of the residents of those houses was produced before the court. It was further pointed out that non-production of the independent witnesses creates a doubt in the prosecution story and the evidence of the interested witnesses cannot be relied upon. The learned A.G.A. refuted the contention. Mahesh Chandra Joshi PW1 had admitted that there were houses of certain persons at some distance from the place of occurrence. Mahesh Chandra Joshi PW1 has stated in his deposition that none came at the spot except the brothers of the complainant. It is not established from the evidence of Mahesh Chandra Joshi PW1 that other persons reached at the spot. It is not been indicated in the FIR that the other persons reached at the spot. It was further pointed out that the prosecution did not produced Suresh Chandra, the brother of the complainant Mahesh Chandra Joshi in his evidence. The prosecution has adduced the evidence of Mahesh Chandra Joshi PW1

with whom Suresh Chandra reached at the spot. He is also a brother of the injured and the deceased. The statement shows that at the time of the occurrence only Harish Chandra Joshi PW3 and Sumant Kumar were at the spot. Sumant Kumar have died later on. PW3 Harish Chandra Joshi was only witness who was present at the spot. The complainant and Suresh Chandra saw the incident then they started approaching the place of incident. Suresh Chandra and Mahesh Chandra Joshi reached at the spot immediately. Mahesh Chandra Joshi-PW1 had stated in his evidence that the milkman Rafiq, Ved Prakash and his servant Gulab had witnessed the occurrence. It was pointed out that Gulab and Rafiq were not examined by the prosecution to support the prosecution version. Perusal of the record reveals that the prosecution had given an application to discharge the witnesses Rafiq and Gulab in which it has been indicated that they have been owned over by the appellants. Under these circumstance, there production could not have served any useful purpose to produce these witnesses. It has become common where a witness is not inclined to depose because in the prevailing social structure he wants to remain indifferent. The witnesses have no courage to depose against the accused because of threats of their life.

22. It is well settled principle of law that if the evidence of single person is credible and trustworthy, there is no requirement of law to insist

on plurality of witnesses. It is not necessary to multiply the witnesses on the same point. In the instant case, the careful scrutiny of the evidence of Mahesh Chandra Joshi PW1 and Harish Chandra Joshi PW3 is credible and cogent. Learned counsel for the defence made a lengthy cross examination before the court below and nothing could be elicited from the said cross examination by the defence. The testimony of the injured Harish Chandra Joshi PW3 and Mahesh Chandra Joshi PW1 are credible and cogent.

23. It was further pointed out that the prosecution witnesses are related with each other. It is admitted to both the parties that the witnesses are related to each other. Both the witnesses are the real brother and also brother of the deceased Sumant Kumar and these witnesses are also closely related to the appellant Radha Krishna and his two sons. Radha Krishna is the maternal uncle of the witnesses. There is no rule of law that the evidence of the close relation must be discarded for the simple reason, i.e., they are related to each other. Mahesh Chandra Joshi-PW1 and Harish Chandra Joshi-PW3 must be interested to give their evidence so as to convict the appellants for their wrong doing and they would not like to adopt the course by which some innocent person would be convicted in place of the person really guilty of causing hurt to the witnesses and the deceased. In such circumstances, it would not be just and proper to discard their evidence on account of their

relationship with the deceased. It is also pertinent to mention here that Harish Chandra Joshi-PW3 is the injured witness and he had sustained the injuries during the commission of the offence as such I am of the opinion that he is the most competent witness on the point of commission of offence. The Apex court in the case of **Narendra Nath Khawara Vs. Paras Nath Khaware and others, 2003 SCC (Cr) 1144 and Pramod Mandal Vs. The State of Bihar, 2005 (1) PLJR (SC) 1** wherein the Apex Court has held that the injured witnesses are most competent witnesses and their presence at the place of occurrence cannot be ruled out. They stand on the higher pedestal than the other witnesses. In the instant case, Harish Chandra Joshi-PW3 has narrated the entire incident as has been stated in the preceding paragraph. As such, his presence at the spot and his testimony cannot be disbelieved.

24. Learned counsel for the appellants further contended that there are major contradictions, exaggeration and embezzlement in the testimony of the witnesses with regard to the statement of the witnesses. The learned counsel for the appellants pointed out that in the F.I.R. it is stated that the deceased and Harish Chandra Joshi-PW3 were beaten on the road whereas Mahesh Chandra Joshi-PW1 had stated that he was beaten on the field and certain other discrepancies were pointed out. I have gone through the entire evidence of the case. It has been held in **Sarafat Vs. State of Uttaranchal**

2006 CRI.L.J. 654 that the observation differs from person to person and what one may notice, another may not. An object or moment might emboss its image on one person's mind whereas it might go unnoticed on the part of another. By and large the people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape-recorder. The witness cannot be expected to possess a photographic memory and to recall the details of an incident. Ordinarily if so happens that a witness is overtaken by the events, the witness could not have anticipated the occurrence, which so often has an element of surprise. Ordinarily a witness cannot be expected to recall accurately the sequences of events, which took place in a rapid succession or in a short time span. A witness is likely to get confused or mixed up when interrogated, later on. As the person who has witnessed an incident, like the present one reacts in his own way. Thus every individual reacts on his own way. There is no set of rules of natural reaction. If the contradictions do not affect the prosecution story, the courts should not take into account such discrepancies, which are bound to come on the testimonies. The discrepancies as pointed out by the learned counsel for the appellants are not of much consequences. The court is within its jurisdiction being the first appellate court to reappraise the evidence, but the discrepancies found in the ocular account of two witnesses unless they

are so vital, cannot affect the credibility of the evidence of the witnesses. There are bound to be some discrepancies between the narrations of different witnesses when they speak on details, and unless the contradictions are of a material dimension, the same should not be used to jettison the evidence in its entirety. Incidentally, corroboration of evidence with mathematical niceties cannot be expected in criminal cases. Minor embellishment, there may be, but variations by reason thereof should not render the evidence of eyewitnesses unbelievable. Trivial discrepancies ought not to obliterate an otherwise acceptable evidence. **{See Leela Ram Vs. State of Haryana 2000 SCC(Cri) p/222}**. It has also been held that the Court should have to bear in mind that different witnesses react differently under different situations: whereas some become speechless, some start wailing while some others run away from the scene and yet there are some who may come forward with courage, conviction and belief that the wrong should be remedied. There cannot be any set pattern or uniform rule of human reaction and to discard a piece of evidence on the ground of his reaction not falling within a set pattern is unproductive and a pedantic exercise.

25. Learned counsel for the appellants further contended that there was no cause for the commission of the offence by the appellants. The learned counsel for the appellants further contended that there was no motive on the part of the accused

to commit the offence. It was further pointed out that there was a prior enmity between the parties in regard to the land in dispute and the appellants had been falsely implicated in the case. It is admitted to both the parties that there was a dispute of land and litigation was pending before the High court. It was also admitted that the proceedings u/s 107 and 117 Cr.P.C. had taken place between the parties prior to the present incident. Apart this according to the Dinesh Chandra Pathak-accused/appellant had set fire at hutment of the complainant and he was prosecuted and acquitted by the trial court. The F.I.R. lodged by Mahesh Chandra Joshi and it has been alleged in the F.I.R. itself that there was an old enmity between the parties with regard to the land dispute. It is implicitly clear that the relationship between the parties were strained. The prosecution has alleged that in the said land from where Harish Chandra Joshi-PW3 was coming after giving the milk to the milkman Rafiq near the peepal tree was the rasta in between the fields of the parties to which the appellant Radha Krishna used to plough forcibly. He considered himself to be having a right to use that place as rasta. On the other hand the accused must have necessarily felt annoyed by his such act as they considered the said place to be the part and parcel of their own field. In view of the above circumstances, It cannot be said that there was no motive to cause injury on the person of the deceased as well as Harish Chandra Joshi-PW3. I am of the view that there was sufficient motive for the commission of the offence by the appellants.

26. Learned counsel for the defence further pointed out that the Investigating Officer did not find any blood at the spot. It was further pointed out that there were certain injuries on the person of the deceased which cannot be said that no blood was oozing from the injuries and that blood would have fallen down at the spot. It was further pointed out by Dr. Brij Kishore-PW2 that sufficient blood would have fallen down from the injuries No. 1 from Sumant Kumar Joshi at the spot. Learned A.G.A. refuted the contention. Perusal of the evidence of the prosecution reveals that the witnesses had not stated that sufficient blood was oozing from the injuries which could have fallen down at the spot. Mahesh Chandra Joshi-PW1 had stated that he did not see as to whether the blood of Sumant Kumar and Harish Chandra Joshi had fallen at the spot. Dr. Brij Kishore-PW2 had also stated in his evidence that it was not necessary that the blood from the injury No. 1 of Sumant Kumar must have fallen down at the spot. It is also pertinent to mention here that the incident took place on a kachha field and if some blood would have dropped, it would not be possible to find the blood stain from the kachha land. It was pertinent to mention here that the Investigating Officer has visited the spot on the next date. The Investigating Officer has himself admitted in his evidence that there was no blood at the spot so he did not collect it from the spot. For the sake of argument, the blood was not taken by the Investigating Officer. It does not make any

difference. It can only be said that it is a defective investigation. Even if the Investigation is defective that pales into insignificance when ocular testimony is found credible and cogent. In the case of defective investigation the court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on the account of the defect, to do so would tantamount to playing into the hands of the investigation officer if the investigation is designedly defective. **Dhanaj Singh Alias Shera & others Vs. State of Punjab 2004 (3) SCC p/654, Chhotu vs. State of Maharashtra 1997 CRI. L.J. 4394 (SC) and Karnel Singh Vs. State of M.P. 1995 CRL. L.J. 4173.**

27. In view of the above discussion, I do not find any merit in the argument advanced by the learned counsel for the defence.

28. It was further contended that there is a difference in the injury shown in the injuries report of Sumant Kumar prepared by Dr. Brij Kishore-PW2 at the P.H.C. Kichha on 24.06.1979 and the ante mortem injuries shown in the post mortem report prepared by the Doctor who conducted the autopsy on the body of the deceased-Sumant Kumar. It was also contended that the injury report prepared by Dr. Brij Kishore-PW2 reveals that there were only 4 injuries on the person of the deceased whereas in the post mortem report there were 11 ante mortem injuries on the person of the deceased Sumant

Kumar. The cause of the death as reported in the report Ex.Ka.4 is due to coma as a result of head injuries. The injury No. 1 as written by Doctor Brij Kishore-PW2 is multiple lacerated wound in the area of 8 cm x 1.5 cm x muscle deep in the middle of the sculp. It reveals that there were many wounds on the head which he had not counted at the time of the examination. He had only written the area of all such wounds. The fatal injury on the person of the deceased was on the head injury by which death of the deceased was caused. I do not feel that there is any difference in recording the injuries of the deceased. The Doctor who conducted the postmortem he had narrated all the injuries minutely. I so not find any dissimilarity between the injuries reports and post mortem report. Apart this, the ocular testimony of the witness is credible and cogent. It is also opined by the Doctor that injuries were caused by some blunt object and duration was also corroborated with time and date of the incident. It was further opined by Dr. Brij Kishore-PW2 with regard to the injuries of Harish Chandra Joshi that they were also caused by some blunt object. The time of the injuries is also corroborated from the medical evidence.

29. It is also pertinent to mention here that the occurrence took place on 24.06.1979 at 6:30 p.m. and the report of the said incident was lodged by Mahesh Chandra Joshi-PW1 at the police station at 20:15 p.m. of the same day. The distance between the place of incident and the police station is about

6 kms. according to the F.I.R. It is also in the evidence of the prosecution that immediately after the incident both the injured were taken to their house and thereafter rikshaw was taken and the rikshaw covered a distance of 1 km. from the place of the incident to the place of motor road and from there they were taken to the police station where the report was lodged. The prompt FIR thus inspire confidence that it was not the outcome of due consultation or deliberation. FIR in a criminal case and particularly in a homicidal case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstances in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eye witnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. The prompt F.I.R. inspires confidence with regard to the prosecution version. In the instant case, the prompt F.I.R. corroborates the incident.

30. The appellants had filed certain documents in support of their case and they also produced Shri B.C. Naik, Joint Director, I.B. who happen to be the

Addl. S.P. Rudrapur, Nainital at the time of the incident. He had stated in his evidence that he received a complaint against the Investigating Officer of this case and inquiry was conducted by him. The appellants tried to point out in the evidence of B.C. Naik-DW-1 that certain statements were recorded during the inquiry and the defence tried to falsify the prosecution evidence. However, the statement cannot be taken into account on the ground that DW-1 has stated in his defence evidence, allegedly made by PW3 in such inquiry, could not be proved by him. He has stated that the witness has stated that he could not say as to whether or not he had actually recorded any statement of PW-3 in the said inquiry. Thus this evidence does not help to the defence.

31. Learned Trial Court has acquitted Hori Lal and Muni Lal on the ground that their identity with regard to the participation of the offence was a mistaken identity and the participation of other two accused in place of Hori Lal and Muni Lal cannot be ruled out who formed the unlawful assembly. The said findings of the trial court was not assailed before me. The accused Hori Lal and Muni Lal were acquitted on the ground of mistaken identity.

32. In view of the above discussion, I am of the view that the prosecution has established the guilt beyond any reasonable doubt against the appellants. I find that the learned trial court has rightly convicted and sentenced the appellants and there is

no infirmity in the judgment passed by the trial court. Hence, the appeal is dismissed and the conviction and sentence awarded by the trial court are confirmed.

33. Let the copy of the judgment alongwith record of the case be immediately sent back to the court concerned for needful compliance under intimation to this Court within four months positively.

(J.C.S.Rawat, J.)

20th April, 2006
Shiv